IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

VERONICA M.,	)	
	)	2 CA-JV 2007-0015
Appellant,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
ARIZONA DEPARTMENT OF	)	Rule 28, Rules of Civil
ECONOMIC SECURITY,	)	Appellate Procedure
MAXIMILIANO M., and GEMINI M.,	)	
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17434700

Honorable Stephen M. Rubin, Judge Pro Tempore

AFFIRMED

Jacqueline Rohr
Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Dawn R. Williams
Tucson
Attorneys for Appellee Arizona
Department of Economic Security

E S P I N O S A, Judge.

¶1 Appellant Veronica M. appeals from the juvenile court's order of January 19, 2007, terminating her parental rights to her then-three-year-old son, Maximiliano (Max), and her infant daughter, Gemini. Veronica contends the juvenile court lacked sufficient evidence to support any of the following conclusions: (1) that Veronica's history of chronic drug abuse resulted in an inability to discharge parental responsibilities that would continue for "a prolonged indeterminate period," A.R.S. § 8-533(B)(3); (2) that Veronica had "substantially neglected or willfully refused to remedy the circumstances" that caused the removal of her children, who had remained in court-ordered care for longer than nine months, § 8-533(B)(8)(a); or (3) that after the children had remained in court-ordered care for longer than fifteen months, there was a substantial likelihood Veronica would not have been "capable of exercising proper and effective parental care and control in the near future," § 8-533(B)(8)(b). In addition, she maintains the juvenile court erred in finding that severance was in the children's best interest. For the reasons addressed below, we affirm.

Background

¶2 Viewed in the light most favorable to sustaining the court's ruling, *see In re Maricopa County Juvenile Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994), the record establishes the following events. In June 2005, after Gemini tested positive for amphetamines at birth, the Child Protective Services (CPS) division of the Arizona Department of Economic Security (ADES) removed Max and Gemini from Veronica's care. ADES then filed a dependency action, and CPS prepared a case plan

outlining steps to assist Veronica in meeting the goal of family reunification. Case plan tasks included participating in random urinalysis, completing substance abuse and psychological assessments and following any resulting recommendations for treatment, attending an approved parenting class, resolving outstanding warrants, maintaining safe and appropriate housing, and obtaining a legal source of income sufficient to support herself and her children.

¶3 The treatment recommended for Veronica included individual and group therapy. At the permanency hearing in June and July 2006, her therapist, Michael Cameron, testified that Veronica's participation in both individual and group therapy had been "very spotty."[1] Between October 2005 and April 2006, she had appeared only three times for what were to be weekly appointments for individual counseling. However, Cameron noted that after a "watershed" therapy session on April 21, Veronica's attendance had been "[m]uch, much better," and he had become convinced of her commitment to change her lifestyle. He said there was a possibility Veronica would be able to parent her children after several months of additional treatment if she obtained intensive therapy, continued to take anti-depressant medication, had her parenting skills monitored, and was in compliance with her case plan.

[1]The parties stipulated that testimony presented at the permanency hearing be admitted as evidence in the termination proceeding.

¶4 CPS case manager Susan Morris had agreed that Veronica's participation had improved shortly before the permanency hearing but described her commitment to her case plan tasks as inconsistent. For example, Veronica was reportedly "doing really well" in a parenting skills program during May 2006 but still had not made sufficient progress to complete the twelve-week course that had started in September 2005. And before April 2006, she had missed scheduled visitations, sometimes leaving Max "waiting for her while [he cried] and [threw] tantrums."[2]

¶5 In addition, before May 2006, Veronica had not been fully compliant with random drug testing, failing to contact the testing agency daily or to provide samples as required. The urine samples she did provide tested positive for opiates in August 2005, for methamphetamine and cocaine in October 2005, and for marijuana in February, March, and June 2006. In March 2006, Veronica was discharged "unsuccessfully" from a rehabilitation center. Although she had been enrolled in several classes to address substance abuse and relationship issues, Veronica did not attend them regularly. Morris also expressed concern that Veronica had failed to obtain safe housing, having moved into an apartment complex Morris had "known from previous cases to be infested with drug use," and had not provided evidence of a legal source of income.

[2]Between November 2005 and February 2006, Veronica missed ten visits with her children.

¶6 In June 2006, the month in which the permanency hearing was scheduled, Veronica failed to submit to urinalysis on four occasions. A hair sample analysis conducted on June 26 revealed cocaine metabolites suggesting ingestion of cocaine at the level of "[h]igh use (constant)." Veronica admitted at the permanency hearing that she had used cocaine during June 2006, even though she knew she was almost five months pregnant at the time. After the hearing, the juvenile court changed the case plan from reunification to severance and adoption, and ADES filed a motion for termination.

¶7 At the contested termination hearing held on October 13 and November 1, 2006, ADES presented evidence that Veronica had been in a residential treatment program from July 21 until October 2, 2006. During that time and since her graduation from the program, Veronica had been compliant with all case plan services, including random urinalysis, parenting classes, and individual counseling. However, after completing the residential treatment program, Veronica had returned to the apartment complex that was "very known for drug trafficking" and had given birth to her third child on October 25. Veronica testified that, although she was not yet employed, she was "planning on finding a job as soon as possible" and that, if she was unable to find work, she could support her children through a combination of subsidized housing and other public and private assistance programs.[3]

[3]By October 13, 2006, when the termination hearing convened, Veronica still had not addressed the outstanding warrants for her arrest, issued for her failure to appear in court on misdemeanor charges. The warrants were quashed before the continued hearing date of

¶8 Therapist Cameron again urged the court to give Veronica additional time to remedy the situation that caused removal of her children. He described Veronica as "gaining on" her substance abuse problem through an increased sense of personal responsibility, but he opined that she needed additional time to address "relapse issues" by forming a close personal relationship with someone "who will support her." He suggested that if Veronica could establish a good social support network, "it would be pretty—close to say, you know, I think she's going to be all right in the world."

¶9 Despite Veronica's recent strides, case manager Morris continued to believe that severance and adoption was the appropriate permanent plan for Max and Gemini, explaining,

> [Veronica] has shown little periods of compliance and then has gone non-compliant. I feel that she hasn't had a long enough period of time out of a treatment center where she has been sober, and I feel that she just had—just was using drugs in June of 2006, and that's while being pregnant. That's a concern for me.

Based on her CPS training and experience, Morris opined that Veronica's living environment and the absence of intensive after-care treatment increased the chances that she would relapse. Dr. Michael German, a psychologist who had examined Veronica in October 2005 and had prepared a report for the permanency hearing, also spoke of the "very high risk" of relapse for methamphetamine users. He emphasized that, to determine whether a child can

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November 1.

safely be returned to a parent with a history of substance abuse, "[i]t's a matter of whether or not [the parent is] putting the supports in [her] life, whether [she has] generated positive systems for [herself]; work, social network, nice place to live." He reiterated his opinion of June 2006 that "there would be turmoil" for the children if they were returned to Veronica while she was unemployed and lived in an apartment complex "where there were known substance abusers."

¶10 Max and Gemini have been living together in the same foster home since April 2006. Their foster parents are meeting their medical needs and are willing to adopt them.

Discussion

¶11 The juvenile court, as the trier of fact in a severance proceeding, is in the best position "to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). Thus, "[w]e view the evidence, and draw all reasonable inferences from it, 'in favor of supporting the findings'" upon which the juvenile court's order is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 13, 53 P.3d 203, 207 (App. 2002), *quoting In re Maricopa County Juvenile Action No. J-75482*, 111 Ariz. 588, 591, 536 P.2d 197, 200 (1975). We do not reweigh the evidence, *see Lashonda M. v. Arizona Department of Economic Security*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), and will affirm a termination order "unless no reasonable evidence supports [it]" and the order is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d

68, 70 (App. 1997). Proof of a single statutory ground is sufficient for termination. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000). If we can affirm on any one ground, we need not address arguments pertaining to any other ground. *See id*.

Section 8-533(B)(8)(a)

¶12 Pursuant to § 8-533(B)(8)(a), termination of parental rights is justified when

> [t]he child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order . . . and the parent has substantially neglected or wilfully refused to remedy the circumstances which cause the child to be in an out-of-home placement.

Veronica directs our attention to her recent attempts to address her problems and improve her life, and we agree her efforts are commendable. Unfortunately, she did not even begin to exhibit a full commitment to her case plan tasks until April 2006, ten months after Max and Gemini had been removed from her care and only two months before the scheduled permanency hearing. Under such circumstances, we cannot say the juvenile court erred in concluding severance of Veronica's parental rights was justified under § 8-533(B)(8)(a).

¶13 Division One of this court addressed the same argument Veronica makes here in *In re Maricopa County Juvenile Action No. JS-501568*, 177 Ariz. 571, 869 P.2d 1224 (App. 1994). In that case, a mother with a substance abuse problem argued the court had "ignored her successful efforts at rehabilitation in the months before the severance hearing" in ruling that termination of her parental rights was justified because she had "substantially

neglected or willfully refused" to remedy the cause of removal within the time frame set forth in former § 8-533(B)(6)(a), now § 8-533(B)(8)(a).[4] *Maricopa County No. JS-501568*, 177 Ariz. at 575, 869 P.2d at 1228. As Division One explained,

> parents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties (in this case, addiction) within [nine months] after their children are placed in the custody of the State.

Id. at 576, 869 P.2d at 1229. On the other hand, if a parent "makes only sporadic, aborted attempts to remedy her addiction in that first [nine months], a trial court is well within its discretion in finding substantial neglect and terminating parental rights on that basis." *Id*. This result is consistent with the language of the statute and its legislative history, "even though the parent eventually begins a successful recovery before the severance hearing." *Id*. at 577, 869 P.2d at 1230. Veronica's efforts, like the efforts of the parent in *Maricopa County No. JS-501568*, were simply made too late. *Id*.

¶14 Because we conclude reasonable evidence supports the juvenile court's order terminating Veronica's parental rights pursuant to § 8-533(B)(8)(a), we need not address her

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[4]When *Maricopa County No. JS-501568* was decided, § 8-533(B)(6)(a) pertained to parents whose children had been in out-of-home care for more than one year. 1988 Ariz. Sess. Laws, ch. 50, § 1. The statute has since been amended to shorten the relevant time frame to nine months. 1994 Ariz. Sess. Laws, ch. 116, § 5. The subsections of § 8-533(B) have subsequently been renumbered. 1995 Ariz. Sess. Laws, ch. 221, § 5; 2002 Ariz. Sess. Laws, ch. 173, § 4.

argument that the court erred in severing her rights under § 8-533(B)(8)(b). *See Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687.

Section 8-533(B)(3)

¶15 In its answering brief, ADES "concedes that evidence presented at trial . . . defeats the juvenile court's finding that [Veronica's] substance abuse would continue for a prolonged indeterminate period" and therefore undermines the court's conclusion that the § 8-533(B)(3) ground had been proven. Although we need not address the validity of this ground to affirm the termination of Veronica's parental rights to Max and Gemini, in light of ADES's candid concession of error, we modify the court's order to eliminate § 8-533(B)(3) as a basis for termination so as not to affect future proceedings involving the child born to Veronica in October 2006. *See* § 8-533(B)(10).

Best Interests

¶16 Veronica contends the evidence was insufficient to support the juvenile court's conclusion that terminating her parental rights is in the best interests of Max and Gemini because the juvenile court "failed to take into full account [Veronica]'s relationship with her children and the children's relationship with [her]." She does not cite any evidence that this factor had specific relevance in these proceedings but argues only that "[t]he biological connection between the mother and children is an important one."

¶17 However, "the mere existence of a biological link" does not preclude a finding that severance of parental rights is in a child's best interests. *Cf. Lehr v. Robertson*, 463

U.S. 248, 261, 103 S. Ct. 2985, 2993 (1983) (due process rights of parents do not arise from genetic link alone). Rather, we inquire whether reasonable evidence supported the court's finding by a preponderance of the evidence that the children "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Oscar O.*, 209 Ariz. 332 , ¶ 6, 100 P.3d at 945; *see also Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005) (preponderance standard of proof applies to best interests analysis).

¶18 We find no error in the juvenile court's determination that severance of Veronica's parental rights was in the children's best interests. "The existence of a current adoptive plan is one well-recognized example" of a benefit derived from termination of parental rights. *Oscar O.*, 209 Ariz. 332 , ¶ 6, 100 P.3d at 945 (collecting cases). The court may also consider whether the children's existing placement is meeting their needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶19 Here, evidence at the termination hearing established that Max and Gemini are living together with foster parents who are meeting the children's medical needs and wish to adopt them both. The juvenile court also heard evidence about Veronica's risk of relapse and the potential detriment to the children if they were returned to her while she is unemployed and living in an apartment complex populated by substance abusers. This evidence was sufficient to support the juvenile court's best-interests finding.

Conclusion

¶20 The record contains reasonable evidence to sustain the juvenile court's findings that terminating Veronica's parental rights to Max and Gemini is warranted under § 8-533(B)(8)(a) and that severance is in the best interests of the children. We vacate that portion of the juvenile court's order finding termination justified under § 8-533(B)(3) but otherwise affirm the court's ruling.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge